

Committed to Justice

The Rise of Judicial Administration
in California

Larry L. Sipes





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Administrative Office of the California Courts
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photograph by William A. Porter.*



FOREWORD



We are most fortunate that the vibrant history of judicial branch administration has been laid out for us in the Administrative Office of the California Courts' first formal chronicle, *Committed to Justice: The Rise of Judicial Administration in California*.

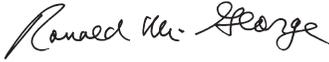
Ablly rendered by Larry Sipes, this first-ever history of California court administration from statehood to the close of the twentieth century illuminates the debates, challenges, setbacks, and victories of the judges, attorneys, legislators, and others who together built what today is the largest and most successful court system in the world.

Mr. Sipes is uniquely qualified to undertake this project. He is a native Californian who previously served as executive director of the state's Constitution Revision Commission. As the former president of the National Center for State Courts, he is a noted national leader in court administration. Most recently, he served as the inaugural scholar-in-residence for the Administrative Office of the California Courts. His distinguished and varied career has provided him with an in-depth understanding of the most significant events in the 150-year construction of our modern and far-flung court system.

This scholarly presentation first focuses on the most important milestones in our court system's history. In the final chapter, Mr. Sipes applies his background and insight to look ahead at what lies in store for our system during the first fifty years of the new millennium. We anticipate that this publication will be of interest to the legal community, informative for researchers and historians, and useful to policymakers from every branch of government. Without question, it will be a valuable resource for

all of us—whether judges, court administrators, staff of the Administrative Office of the California Courts, members of the bar or the public, or officials from the other branches of California government—as we work together to meet the challenges that lie ahead for our branch.

As this book demonstrates, our judicial branch has a long tradition of working cooperatively with others in our state and our nation to ensure that California’s courts provide fair and accessible justice for all. This fine contribution adds enormously to our understanding of how best to administer our courts and will greatly assist us in remaining “committed to justice.”



Chief Justice Ronald M. George
Chair of the Judicial Council of California



William C. Vickrey
Administrative Director of the California Courts

DEDICATION



*T*his chronicle honors the 150th anniversary of the California Supreme Court (1850–2000), the 75th anniversary of the Judicial Council of California (1926–2001), and the 40th anniversary of the Administrative Office of the Courts (1961–2001).

IN APPRECIATION



To Chief Justice Ronald M. George and Administrative Director of the Courts William C. Vickrey for sponsoring this undertaking.

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MILESTONES IN CALIFORNIA'S COMMITMENT TO JUSTICE

1849

The first California Constitution is adopted, creating a new judicial system.

1850

California becomes the thirty-first state of the United States of America.

1862

The Supreme Court is expanded from three to five justices.

1879

A new constitution is adopted, with more detailed provisions governing the judicial branch.

1904

The appellate system is expanded by creation of district courts of appeal for intermediate review between the trial courts and Supreme Court.

1924

The establishment of municipal courts is authorized.

1926

The Judicial Council is created.

1934

Contested elections of appellate judges are replaced by retention elections with approval of nominees for appointment by a new Commission on Qualifications.

1950

Courts of limited jurisdiction are reorganized into justice and municipal courts.

1956

Pretrial conferences are mandated in most civil cases but subsequently repealed.

1957

The position of trial court executive officer is created in the Los Angeles Superior Court.

1960

The position of Administrative Director of the Courts is created.

1960

The Commission on Judicial Qualifications is created to administer a new system of judicial discipline. The preexisting Commission on Qualifications is renamed the Commission on Judicial Appointments.

1961

The first Administrative Director of the Courts is appointed, and the Administrative Office of the Courts (AOC) is established.

1967

The first session of the California College of Trial Judges convenes.

1971

Court-sponsored arbitration of small personal injury cases begins in the superior courts for Los Angeles and San Francisco Counties.

1973

The Center for Judicial Education and Research is created.

1973

The Supreme Court for the first time removes a judge on recommendation of the Commission on Judicial Qualifications.

1974

Persons unable to understand English are granted the right to an interpreter if accused of a crime.

1975

Arbitration is extended to smaller civil cases in larger superior courts.

1976

The Commission on Judicial Qualifications is renamed the Commission on Judicial Performance, and its powers are expanded.

1978

Arbitration of smaller civil cases becomes mandatory.

1985

The AOC establishes the Statewide Office of Family Court Services.

1986

The Trial Court Delay Reduction Act directs the Judicial Council to adopt case processing time standards and pilot programs for delay reduction.

1987

The Judicial Council adopts its first annual plan.

1988

The California Legislature directs the Judicial Council to promote Court Appointed Special Advocate (CASA) programs to assist children in court proceedings.

1988

Family law filings exceed total filings for injury, death, or property damage and do so for the balance of the century.

1991

The Judicial Council inaugurates a comprehensive delay reduction program.

1991

The Commission on the Future of the California Courts is created.

1993

A pilot project for mandatory mediation in civil cases begins.

1992

The first strategic plan is adopted by the Judicial Council.

1993

The Court Interpreters Advisory Panel is created to assist the Judicial Council and courts with a comprehensive program to improve interpreter services.

1996

Child support commissioners and family law facilitators are provided in each county.

1997

Responsibility for funding of the trial courts is consolidated at the state level, establishing full state funding for the judicial branch with allocation of funds by the Judicial Council.

1998

Consolidation of the trial courts into a single superior court in each county commences.

1999

The Judicial Council adopts a mission statement for itself and the judiciary with supporting goals and principles.

2000

The Administrative Office of the Courts adopts a mission statement.

2001

Responsibility for court employees is transferred from the counties to the courts.

1994

The Access and Fairness Advisory Committee is created by the Judicial Council to continue work by previous committees on gender, racial, ethnic, and other biases in the courts.

1997

Strategic planning is extended to the trial courts by the Judicial Council.

1997

Family court programs are consolidated by the Administrative Office of the Courts under the new Center for Children and the Courts (now the Center for Families, Children & the Courts).

1998

A strategic plan for technology is adopted by the Judicial Council.

2000

A tactical plan for technology is adopted by the Judicial Council.

2001

Kings County unifies its courts into a single superior court, the last county to do so.

2002

The state assumes ownership and maintenance of court facilities.

INTRODUCTION



Administration of justice, as a concept and in practice, has existed in California at least since statehood in 1850. Judge R. A. Wilson, one of the original superior court trial judges, referred in 1850 to the “administration of justice” when describing the Spanish *alcalde* system in California.¹ The Committee on the Judiciary, in the same year, reported to the first California Legislature that “the administration of the [justice] system is of more consequence than the system itself.”² From its inception in 1926, the Judicial Council of California has been constitutionally mandated “to improve the administration of justice.”³

Administration of justice, however, is hardly self-defining and means different things to different persons. In fact, there is no agreed definition of the term or the several variations that convey approximately the same meaning: “judicial administration,”⁴ “court management,”⁵ and “to administer the delivery of court system services.”⁶

The absence of an agreed definition is matched by the absence of agreed boundaries. Roscoe Pound, for example, in his seminal 1906 speech, “The Causes of Popular Dissatisfaction with the Administration of Justice,” addressed, among other topics, procedure, adversarial systems, uncertainty, delay, expense, multiplicity of courts, concurrent jurisdiction, geographic jurisdiction, jury systems, political influence on and in courts, and public ignorance regarding the courts.⁷

Chief Justice Arthur T. Vanderbilt of New Jersey, in his 1949 *Minimum Standards of Judicial Administration*, addressed a rather different list of topics: the selection, conduct, and tenure of judges; managing the business of the courts; rulemaking and the judicial regulation of procedure; the selection and service of juries; pretrial conferences; trial practice; courts of limited jurisdiction; the law of evidence; appellate practice; and state administrative agencies and tribunals.⁸

More contemporary expositions expand the boundaries. Standards of Judicial Administration, the series published by the American Bar Association (ABA), seeks to encompass every tangible aspect of the courts. Volume 1, *Standards Relating to Court Organization*, includes structure, rulemaking, policymaking, administration, finance, budgets, and information systems. With respect to judges, these standards address qualifications, selection, discipline, removal, compensation, retirement, continuing education, and evaluation.⁹ In Volume 2, *Standards Relating to Trial Courts*, the ABA addresses a multitude of specific topics ranging from effective procedure to assistance of counsel to cases involving litigants who have AIDS.¹⁰

The latest generation of standards for administering justice moves from the quantitative aspects of courts to the qualitative by espousing and attempting to measure access to justice; expedition and timeliness; equality, fairness, and integrity; independence and accountability; and public trust and confidence.¹¹

The goal of this discussion is neither an attempted definition nor proposed boundaries. Rather, the purpose is to establish that all matters relating to courts, including the substance of judicial decisions, at one time or another have been addressed under “administration of justice” or its kin. The additional purpose is to set the stage for an admittedly selective chronicle of the administration of justice during California’s 150 years of statehood and a look forward into the first 50 years of the new millennium.

While the concept of administering justice has traces of antiquity, implementing the concept began in earnest only a few decades ago. The pace has since accelerated dramatically, and speed has either precluded or eclipsed maintaining a daily diary of judicial administration’s evolution. Each passing day erodes our ability to reconstruct that evolution in California and elsewhere.

In addition to documenting historical events, this chronicle is important for several further reasons. First, the courts are one-third of our tripartite

system of independent and interdependent branches of government, but the past of the judicial branch is history's stepchild.

A recent experience illustrates. The renowned Bancroft Library at the University of California at Berkeley has created and maintains a living history collection containing transcribed interviews with California leaders. During the planning of this book, the expectation was that the Bancroft collection would be a rich source of insights from California's Chief Justices and other leaders of the judicial branch, such as the several Administrative Directors of the Courts. However, Chief Justice Phil S. Gibson is the only Chief Justice in the collection, and the interview with him is directed more to his experiences with Governor Culbert Levy Olson, who appointed him to the Supreme Court, than as the leader of the judicial branch of government. Lost forever are the perspectives of subsequent, but now deceased, Chief Justices Roger J. Traynor, Donald R. Wright, and Rose Elizabeth Bird. We have suffered the same loss in the cases of Ralph N. Kleps, the inaugural Administrative Director of the Courts, and his successor Ralph J. Gampell.

The second reason for this chronicle is that administration of the judicial branch, compared to the executive and legislative, is still maturing here and elsewhere and therefore is possible to capture at an important evolutionary stage. According to Robert W. Tobin in 1999, "What passed for a state judicial branch, until very recently, was a group of appellate judges who performed the adjudicative functions of their office but had a very tenuous control over the trial courts, which remained local institutions immersed in local political culture, local government operations, and the local legal culture. The judicial branch of state government was, in large part, a legal fiction, rather than an operational reality."¹²

Finally, throughout California, and in many parts of America, courts as institutions are undergoing metamorphoses. In the process they are probing new areas of accountability, community relations, and justice. These efforts deserve to be memorialized.

Even so, the balance between inclusion and exclusion is delicate. Some will decry the amount of detail that follows. Others will complain of omissions or emphasis and join Cervantes' ancient indictment of "those grave chroniclers who give us such brief and succinct accounts that we barely taste, the gist of matter being left in their inkwells out of carelessness, malice or ignorance."¹³

Hopefully, the balance struck here will satisfy most readers. The choices in no way reflect anything other than a desire to capture as accurately as possible an important part of California's past and future.

California has the largest court system among the states, has one of the largest in the world, and has been at or near the cutting edge in the evolution of justice administration. In recent years California has enacted justice system changes on an unprecedented scale.

This is an auspicious time for drawing attention to the historical significance of these momentous changes. The Supreme Court turned 150 in 2000. The Judicial Council celebrated its 75th anniversary in 2001, followed immediately by the 40th anniversary of the Administrative Office of the Courts (AOC) that same year. The longevity and contributions of these vital institutions, both at home and elsewhere, warrant the focus on California's judicial branch.

It is useful to dwell briefly on the tendency to attribute achievements to incumbents at the time the achievement occurs. That tendency must be resisted here and throughout because the most notable improvements in the administration of justice evolved across the tenures of several Chief Justices and Administrative Directors of the Courts and required decades of effort to attain success. Chief Justice Arthur T. Vanderbilt could here find ample support for his statement: "Manifestly judicial reform is no sport for the short-winded or for lawyers who are afraid of temporary defeat."¹⁴

Consider, as one of many examples, trial court unification, which is later presented in detail. It could be argued that Chief Justice Ronald M. George and Administrative Director of the Courts William C. Vickrey

deserve full credit since unification was legislatively, constitutionally, and practically achieved between 1998 and 2001 during their watch. It certainly is a fact that without their leadership, diplomacy, and tenacity, unification would today remain an unfulfilled goal.

But in many ways, their remarkable efforts were a culmination of collective efforts stretching back to midcentury. The foundation for trial court unification, it could reasonably be proposed, was laid in 1950 with lower court reorganization accomplished under Chief Justice Phil S. Gibson prior to creation of the Administrative Office of the Courts. That foundation was expanded and strengthened by efforts in the early 1970s under Chief Justice Wright and Administrative Director of the Courts Ralph N. Kleps that produced Judicial Council and legislative consideration of both further lower court reorganization and a single-level trial court. Although those efforts were unsuccessful at the time, these topics remained on the agenda of the Judicial Council and received continuing legislative consideration. They also made possible in 1994 ultimate establishment of the municipal courts as the sole trial court of limited jurisdiction, which occurred during the overlapping tenures of Chief Justice Malcolm M. Lucas and Administrative Director Vickrey.

The fact is that hands too numerous to credit pulled on the oars of justice administration over the years. The equally important fact is that California was blessed, particularly during the second half of the last century, with several Chief Justices and Administrative Directors of the Courts who contributed remarkable leadership skills. Those skills were invaluable in establishing effective governance and other monuments in the administration of justice.

California was doubly blessed. In addition to several outstanding leaders at the state level, there was a rich supply at both trial court and appellate levels of leadership, courage, creativity, and commitment. Indeed, it is all too easy to imagine either the subversion or collapse of the many initiatives for improvement of the administration of justice during this period in the absence of this cavalry of leaders.

Credit reaches beyond the judicial branch. At key times and on key issues, leaders in the legislature stepped forward to enlist in these efforts. This also was true of several governors, senior executive-branch staff members, and county officials.

At various times and in various ways important progress in the administration of justice was achieved thanks to contributions from entities such as the State Bar of California, local or specialty bar associations, and the California Judges Association, as well as organizations external to California or the court system. Even if it were possible to identify and attribute those contributions (a dubious assumption), it seems no more appropriate than individual recognition in view of the duration and complexity of organizational effort required for the fundamental changes that occurred in these many decades.

Finally, the matters recorded here obviously did not occur in a vacuum. There has been continuous interaction between justice administration in California and significant national movements or experiments in other states. Indeed, these interactions spanned a spectrum—from the campaign early in the 1900s to create judicial councils as vehicles for reform to the consortium of entities in the latter part of the century dedicated to eradicating gender, racial, and other biases in our judicial systems. These synergies are noted when they have been especially vivid. To capture and do justice to all these interactions is beyond the capacity of this chronicle, but this in no way depreciates their importance or the importance of California's contributions to national advances.

Notes

- 1 [R. A. Wilson], “The Alcalde System of California,” 1 Cal. 559 (San Francisco: Bancroft-Whitney, 1906).
- 2 [California] Senate Committee on the Judiciary, February 27, 1850, “Report on Civil and Common Law,” 1 Cal. 588 (San Francisco: Bancroft-Whitney, 1906), p. 599.
- 3 California Constitution, article VI, section 6.
- 4 Arthur T. Vanderbilt, ed., *Minimum Standards of Judicial Administration: A Survey of the Extent to Which the Standards of the American Bar Association for Improving the Administration of Justice Have Been Accepted throughout the Country*, The Judicial Administration Series ([New York]: Law Center of New York University for the National Conference of Judicial Councils, 1949).
- 5 Ernest C. Friesen, Edward C. Gallas, and Nesta M. Gallas, *Managing the Courts* (Indianapolis: Bobbs-Merrill, 1971).
- 6 American Bar Association, Judicial Administration Division, *Standards Relating to Court Organization*, Standards of Judicial Administration, volume 1 ([Chicago]: American Bar Association, 1990), p. vii.
- 7 Roscoe Pound, address delivered to the American Bar Association’s National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (August 29, 1906, St. Paul, Minnesota); text reported in *The Pound Conference: Perspectives on Justice in the Future* (St. Paul: West Publishing Co., 1979), pp. 337–53.
- 8 Vanderbilt, ed., *Minimum Standards of Judicial Administration*.
- 9 American Bar Association, *Standards Relating to Court Organization*.
- 10 American Bar Association, Judicial Administration Division, *Standards Relating to Trial Courts*, Standards of Judicial Administration, volume 2 ([Chicago]: American Bar Association, 1992).
- 11 U.S. Department of Justice, Bureau of Justice Assistance, National Center for State Courts, *Trial Court Performance Standards and Measurement System Implementation Manual* (Washington, D.C.: Bureau of Justice Assistance [1997]).
- 12 Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform* (Williamsburg, Va.: National Center for State Courts, 1999), p. 3.

- ¹³ Miguel de Cervantes, *Don Quixote de la Mancha*, Modern Library Edition (New York: Random House, 1998), p. 136.
- ¹⁴ Vanderbilt, ed., *Minimum Standards of Judicial Administration*, introduction, p. xix.